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JUN 22 2009 LK
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK RABY,

Plaintiff,

v.

ONSRUD CUTTER, LP, d/b/a ONSRUD, an
Illinois Limited Partnership,

Defendant.

No. **C09-0863** *JLR*

NOTICE OF REMOVAL



09-CV-00863-CMP

TO: The Honorable Judges of the United States District Court of the Western District of Washington;

TO: Mark Raby, Plaintiff

AND TO: Joel P. Nichols, Counsel for Plaintiff

Pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1441, Defendant Onsrud Cutter, LP, d/b/a Onsrud ("Defendant") hereby removes the above-captioned action from the Superior Court of Washington for Snohomish County on the grounds of diversity jurisdiction. 28 U.S.C. § 1332(a) and 28 U.S.C. § 1441(a).

The following statement is submitted pursuant to 28 U.S.C. § 1446(a):

1. On May 15, 2009, an action was commenced by Plaintiff, in Snohomish County Superior Court against Defendant, designated Case Number No. 09-2-05263-6A. A true and correct copy of the Summons and Complaint is attached as **Exhibit 1**.

2. To Defendant's knowledge, no further proceedings have occurred in state court.

NOTICE OF REMOVAL - 1
(09-2-05263-6)

Jackson Lewis LLP
One Union Square
600 University Street, Suite 2900
Seattle, Washington 98101
(206) 405-0404

ORIGINAL

NO ISS. SBA 27080

3. On May 22, 2009, Defendant received a copy of the Summon and Complaint through a letter that its attorneys received from Joel P. Nichols, Counsel for Plaintiff. *See* Declaration of Kurt Starovich ("Starovich Decl.") at ¶ 5 and **Exhibit A**.

4. Defendant is an Illinois limited partnership with its headquarters and principal place of business in Libertyville, Illinois. Starovich Decl. at ¶ 2.

5. The general partner for Defendant is Onsrud, Incorporated, a Delaware corporation with its principal place of business in Libertyville, Illinois. Starovich Decl. at ¶ 3.

6. The limited partner for Defendant is Leitz Metalworking Technology GmbH & CO. KG, a German Corporation with its principal place of business in Oberkochen, Germany. Starovich Decl. at ¶ 4.

7. According, Defendant is a citizen of the State of Illinois, the State of Delaware and the Country of Germany. *See, e.g., Carden v. Arkoma Associates*, 494 U.S. 185, 110 S.Ct. 1015, 108 L.Ed.2d 157 (1990).

8. Based on information and belief, and the allegations in Plaintiff's Complaint, Plaintiff is a resident of the State of Washington. *See Exhibit 1* at ¶ 1.1.

9. Plaintiff is seeking damages in excess of the jurisdictional amount of this Court, \$75,000.00. Specifically, as set forth in the Complaint:

a. Plaintiff claims that he is owed lost wages and other employment benefits;

b. Plaintiff does not plead the dollar amount of employment benefits he alleges he is owed, but Plaintiff alleges that the amount of wages owed to him is approximately \$74,904.06;

c. Plaintiff alleges that he is entitled to double the amount of the wages owed to him pursuant to RCW 49.52.070, or a total of \$149,808.12 for lost wages and double damages alone; and

d. Plaintiff demands attorneys' fees and costs under Chapters 49.48 and 49.52 RCW.

See Exhibit 1 at ¶¶ 2.1, 3.2, 4.2, 5.2, 5.3, 6.1-6.4; *see also Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("[W]here an underlying statute authorizes an award of attorneys'

1 fees, either with mandatory or discretionary language, such fees may be included in the amount
2 in controversy.”).

3 10. This Court has original jurisdiction over this civil action because, based on Plaintiff's
4 assertions in this Complaint, the matter in controversy exceeds the sum or value of \$75,000.00 and
5 is between citizens of different states. 28 U.S.C. §1332(a)(1).

6 11. Defendant has filed and served this Notice of Removal within 30 days of receipt of
7 the Summons and Complaint. Accordingly, this Notice of Removal is timely filed pursuant to 28
8 U.S.C. § 1446(b).

9 12. This Court is the United States District Court for the District and division in
10 which Snohomish County Superior Court Case No. 09-2-05263-6 is pending.

11 DATED this 22nd day of June, 2009.

12 JACKSON LEWIS LLP

13
14 By 

Karen P. Kruse, WSBA #19857

Peter H. Nohle, WSBA #35849

Attorneys for Defendants
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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that a true and accurate copy of the document to which this declaration is affixed was sent via hand delivery, on this day, to:

Joel P. Nichols
Deno Millikan Law Firm, PLLC
3411 Colby Avenue
Everett, WA 98201
Tel: 425-259-2222
Fax: 425-259-2033

Dated this 22nd day of June, 2009, at Seattle, Washington.

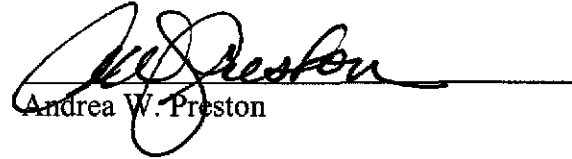

Andrea W. Preston

EXHIBIT 1

FILED

MAY 15 2009

SONYA KRASH,
COUNTY CLERK
SNOHOMISH CO. WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARK RABY,

Plaintiff,

vs.

ONSRUD CUTTER, LP, d/b/a ONSRUD, an
Illinois Limited Partnership,

Defendant.

09 2 05263 6

No. _____

SUMMONS

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by the above named plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiff within 20 days after service, or within 60 days after the service of this summons if served outside the state of Washington, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

SUMMONS-- Page 1

DENO MILLIKAN LAW FIRM, PLLC
3411 COLBY AVENUE
EVERETT, WASHINGTON 98201
425-259-2222

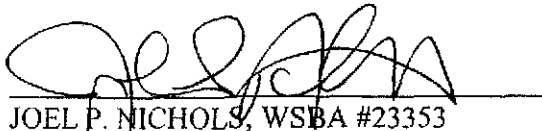
COPY

1 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
2 demand must be in writing and must be served upon the plaintiff. Within 14 days after you
3 serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of
4 this summons and complaint will be void. If you wish to seek the advice of an attorney in
5 this matter, you should do so promptly so that your written response, if any, may be served
6 on time.

7 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of
8 Washington.

9 DATED this 14 day of May, 2009.

10 DENO MILLIKAN LAW FIRM, PLLC

11 
12 JOEL P. NICHOLS, WSBA #23353
13 Attorney for Plaintiff Mark Raby
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SUMMONS- Page 2

DENO MILLIKAN LAW FIRM, PLLC
3411 COLBY AVENUE
EVERETT, WASHINGTON 98201
425-259-2222

FILED

MAY 15 2009

SONYA KRASH
COUNTY CLERK
SNOHOMISH CO. WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

MARK RABY,

Plaintiff,

vs.

ONSRUD CUTTER, LP, d/b/a ONSRUD, an
Illinois Limited Partnership,

Defendant.

No. **09 2 05263 6**

COMPLAINT FOR BREACH OF
CONTRACT OR
MISREPRESENTATION,
WRONGFULLY WITHHELD
WAGES, AND OTHER RELIEF

Plaintiff, Mark Raby, by and through his attorney, Joel P. Nichols of DENO
MILLIKAN LAW FIRM, PLLC, by way of Complaint for Breach of Contract, Negligent
Misrepresentation, Wrongfully Withheld Wages, and Other Relief, alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff Mark Raby is a resident of Snohomish County, Washington.

1.2 Defendant Onsrud Cutter, LP, d/b/a Onsrud, on information and belief, is an
Illinois Limited Partnership licensed to do business in the State of Washington, and
conducted business in Snohomish County, Washington at all times material hereto.

COMPLAINT FOR BREACH OF CONTRACT OR
MISREPRESENTATION, WRONGFULLY WITHHELD
WAGES, AND OTHER RELIEF—Page 1

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EVERETT, WASHINGTON 98201
425-259-2222

COPY

1 1.3 Jurisdiction and Venue: Jurisdiction and venue are appropriate with this
2 court, and all events occurred within Everett, Snohomish County, Washington.

3 **II. OPERATIVE FACTS**

4 2.1 From March 19, 2008 through March 10, 2009, Plaintiff worked for
5 Defendant as a salesman under a written agreement in which Defendant guaranteed him a
6 base salary and commission totaling \$95,000.00 per year for 2008 and 2009.

7 2.2 In January 2009, Defendant unilaterally cut Plaintiff's pay in half without
8 notice. When Plaintiff questioned this action, Defendant explained it interpreted the
9 contractual language to allow Defendant to modify the percentages of compensation it
10 designated as salary and commission, provided those amounts totaled \$95,000 for 2009.
11 Defendant then made a modified offer to Plaintiff of compensation for 2009, still
12 guaranteeing a portion of salary and commission. Believing he had no choice but to accept
13 Defendant's modification of the contract, Plaintiff accepted the modified offer of
14 employment for 2009.

15 2.3. On March 10, 2009, Defendant immediately discharged Plaintiff from his
16 employment without cause.

17 2.4 Defendant's offers, and Plaintiff's acceptance of those offers, formed
18 bilateral contracts that could not be terminated at will.

19 2.5 Plaintiff reasonably relied, to his detriment, on Defendant's guarantees that
20 he would be paid salary and commission through the end of 2009.
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COMPLAINT FOR BREACH OF CONTRACT OR
MISREPRESENTATION, WRONGFULLY WITHHELD
WAGES, AND OTHER RELIEF- Page 2

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425-259-2222

III. FIRST CAUSE OF ACTION – BREACH OF CONTRACT

3.1 Plaintiff realleges paragraphs 1.1 through 2.5 as if fully stated herein.

3.2 Defendant breached its contract with Plaintiff, both by failing to pay him as agreed upon and by terminating his employment, causing Plaintiff to suffer damages in an amount to be proven at trial.

IV. SECOND CAUSE OF ACTION – MISREPRESENTATION

4.1 Plaintiff realleges paragraphs 1.1 through 3.2 as if fully stated herein.

4.2 In the alternative, Defendant intentionally or negligently misrepresented the conditions of Plaintiff's employment, causing Plaintiff to suffer damages in an amount to be proven at trial.

V. THIRD CAUSE OF ACTION – WAGES DUE

5.1 Plaintiff realleges paragraphs 1.1 through 4.2 as if fully stated herein.

5.2 Defendant failed to pay wages owed to plaintiff pursuant to Washington law, RCW Ch. 49.48 et seq, and RCW Ch. 49.52, et seq. The amount of wages owed to plaintiff will be proven at the time of trial herein, is believed to be approximately \$74,904.06.

5.3 Defendant's failure to pay Plaintiff wages due was willful, in violation of RCW 49.52.050.

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COMPLAINT FOR BREACH OF CONTRACT OR
MISREPRESENTATION, WRONGFULLY WITHHELD
WAGES, AND OTHER RELIEF– Page 3

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3411 COLBY AVENUE
EVERETT, WASHINGTON 98201
425-259-2222

VI. DEMAND

Plaintiff Mark Raby requests that judgment be entered against Defendant as follows:

6.1. Awarding plaintiff special damages for lost wages, benefits and medical expenses in an amount to be established at the time of trial.


6.2. Awarding plaintiff double the amount of wrongfully withheld wages pursuant to RCW 49.52.070.

6.3. Awarding plaintiff actual and reasonable attorney fees and costs incurred in this action whether by contract, equity, or statute, including but not limited to RCW 49.48 et seq. and/or RCW 49.52 et seq.

6.4. Awarding plaintiff any additional or further relief which the court finds appropriate or just, including but not limited to prejudgment interest.

DATED this 14 day of May, 2009.

DENO MILLIKAN LAW FIRM, PLLC


JOEL P. NICHOLS, WSBA #23353
Attorney for Plaintiff Mark Raby

COMPLAINT FOR BREACH OF CONTRACT OR
MISREPRESENTATION, WRONGFULLY WITHHELD
WAGES, AND OTHER RELIEF— Page 4

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